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OFFICE OF GENERAL
COUNSEL

August 27, 2010

Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR 6346

Dear Ms. Duncan:

I am the Executive Director of Cornerstone Action. I am writing on behalf of Cornerstone Action in response to your correspondence of August 12, 2010, which I received on August 14, 2010, and which enclosed the complaint filed by the Bill Binnie for U.S. Senate Campaign. I appreciate the opportunity to respond to the baseless allegations in the complaint and to explain why it calls for no further action by the Commission.

In its complaint, the Binnie Campaign alleges that Cornerstone Action has violated the Federal Election Campaign Act by coordinating a public communication with Friends of Kelly Ayotte, the principal campaign committee of Kelly Ayotte, a candidate for the Republican nomination for United States Senate in New Hampshire. In particular, the Binnie Campaign claims that there is "reason to believe" that the Ayotte Campaign was "materially involved" in making decisions regarding Cornerstone's television advertisement entitled "The Feeling is Mutual."

The Binnie Campaign's claim of "material involvement" rests wholly on the allegation that the video footage in one of the clips appearing in the advertisement was filmed by an employee of the Ayotte Campaign. On the sole basis of this allegation, and with the added (and fabricated) context that Kelly Ayotte and I served together in the Governor's office many years ago (a "report" as untrue as it is irrelevant¹), the Binnie Campaign has asserted that "it is reasonable to conclude" that the Ayotte Campaign provided Cornerstone with the footage which it subsequently used in its advertisement" and that, by doing so, the Ayotte Campaign engaged in "illegal coordination" under the Act.

¹ While it is true that both Kelly Ayotte and I did work in the office of Governor Craig Benson, we never worked there together. Ms. Ayotte left in June of 2003, and I joined Governor Benson's staff in late July of 2003.

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This argument requires huge leaps of logic at every step, but more fundamentally, it lacks even the slightest factual foundation from which to leap. Whether the footage to which the complaint refers was originally filmed by an agent of the Ayotte campaign, as the Binnie Campaign alleges, I do not know. What I do know is that, contrary to the speculative assertions in the complaint, Cornerstone did not receive the footage from anyone connected with the Ayotte Campaign. Rather, we obtained it from an Internet website available to the general public.

Indeed, our attention was initially directed to the footage in question by a news article which appeared in the Nashua Telegraph on May 23, 2010.² This article referred specifically to the video, which had been posted on "YouTube" three days earlier, and even contained a link to the video.³ And it is from this link that we obtained the footage. It is surprising, to say the least, that no one from the Binnie Campaign was aware that this video, which it accuses Cornerstone of obtaining from the Ayotte Campaign, had been specifically announced by the news media and made publicly available on YouTube more than two months before Cornerstone's advertisement was aired.

In light of these facts, there are two reasons why the "material involvement" conduct prong has not been satisfied in this instance. First, this prong is subject to an important exception (which the Binnie Campaign has conveniently neglected to mention in its complaint), providing that, "if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source," the material involvement prong is not satisfied.⁴ Since the footage was obtained from YouTube, this prong cannot be satisfied. And since the complaint contains no other claims other than this one, the complaint should be recommended for dismissal.

Furthermore, it is far from evident how the factual allegations asserted in the complaint, even if they were completely true in every respect and even if the footage had not been obtained from a publicly available source, would even begin to suggest that the Ayotte Campaign was "materially involved in decisions" regarding the advertisement, as required by the applicable regulation. In this respect, the Binnie Campaign has failed to allege the necessary facts sufficient to state a valid claim for a violation of the conduct prong, for the complaint contains no allegation that the Ayotte Campaign was materially involved in Cornerstone's decision-making process concerning the advertisement at issue.

To be clear, neither with respect to this nor any other communication, has Cornerstone or any of its agents received anything from the Ayotte Campaign. Moreover, the Ayotte Campaign (or any other campaign) has not had any involvement whatsoever in Cornerstone's communications, much less any material involvement in the decisions regarding such

² See www.nashuatelegraph.com/news/statenewengland/746598-227/outside-opinions-disputed.html (last checked August 26, 2010).

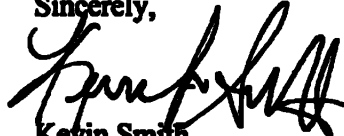
³ See www.youtube.com/watch?v=Yterozcbsyo (last checked August 26, 2010).

⁴ See 11 C.F.R. § 109.21(d)(2).

communications. The Binnie Campaign's assertions to the contrary are wholly without legal or factual basis.

I trust that this response has demonstrated that the complaint warrants no further action by the Commission and should be recommended for dismissal.

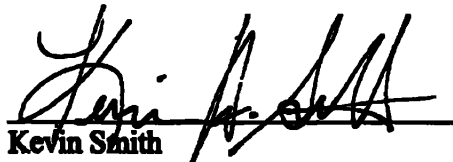
Sincerely,



Kevin Smith
Executive Director

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27 day of August, 2010.


Kevin Smith

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